

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :	Platner, <i>et al.</i>	CONFIRMATION No. :	8906
SERIAL NUMBER :	09/888,345	EXAMINER :	Michael Misiaszek
FILING DATE :	June 22, 2001	ART UNIT :	3625
FOR :	METHOD FOR PROVIDING A CERTIFICATE FOR AN ONLINE PRODUCT		

Mail Stop: Issue Fee

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

UNDER 37 C.F.R. §1.705(b)

Applicants request reconsideration of patent term adjustment for the above-referenced application. Also enclosed is the two-hundred dollar fee as required by 37 C.F.R. § 1.18(e).

Applicants received a Notice of Allowance and Fees Due from the U.S. Patent and Trademark Office, mailed on May 20, 2009, which stated that the Patent Term Adjustment under 35 U.S.C. 154(b) to date is 492 days. This Request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration of the patent term adjustment calculation to **742 days**, based on the facts provided herein.

This patent application was filed on June 22, 2001, and is therefore subject to the patent term adjustment procedures set forth in 37 C.F.R. §§ 1.702 to 1.705 for applications filed on or after May 29, 2000.

On August 11, 2004, the Office mailed a Non-Final Office Action. The Action was mailed 720 days after the fourteen month requirement for mailing of the first action after the date on which the application was filed under 35 U.S.C. §111(a). As shown in the PAIR printout submitted as Exhibit A, the number of days of Patent Term Adjustment accounts for the 720 day Office delay.

On November 11, 2004, Applicants filed a Response to the Non-Final Office Action. This Response was received within 3 months of the mailing of the Action.

On November 29, 2004, the Office received an Information Disclosure Statement. As this paper was not expressly requested by the Examiner and was filed after a Response has been filed, the period of adjustment begins on the day after the date the initial reply was filed, *i.e.* November 12, 2004, and ends on the date that the other paper was filed, *i.e.* November 29, 2004, which is 18 days. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 18 day Applicant delay.

On January 21, 2005, the Office mailed a Final Office Action.

On March 18, 2005, Applicants filed a Response to Final Office Action.

On April 7, 2005, the Office mailed an Advisory Action.

On April 19, 2005, Applicants filed a Request for Continued Examination. This Request was filed within 3 months of the mailing of the final Office Action.

On July 18, 2005, the Office mailed a Non-Final Office Action.

On October 24, 2005, the Office received a Response to the Non-Final Office Action 6 days after the date that is three months after the mailing date of the Non-Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 6 day Applicant delay.

On January 10, 2006, the Office mailed a Final Office Action.

On May 10, 2006, Applicants filed a Request for Continued Examination with a one-month extension of time. This Request was filed 30 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 30 day Applicant delay.

On June 27, 2006, the Office mailed a Non-Final Office Action.

On October 27, 2006, the Office received a Response to the Non-Final Office Action with a one-month extension of time. This response was received 30 days after the date that is three months after the mailing date of the Non-Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 30 day Applicant delay.

On January 24, 2007, the Office mailed a Non-Final Office Action.

On April 24, 2007, Applicants filed a Response to the Non-Final Office Action. This Response was received within 3 months of the mailing of the Action.

On July 24, 2007, the Office mailed a Final Office Action.

On December 21, 2007, Applicants filed a Request for Continued Examination with a two-month extension of time. This Request was filed 58 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 58 day Applicant delay.

On February 11, 2008, the Office mailed a Non-Final Office Action.

On August 8, 2008, Applicants filed a Response to Non-Final Office Action with a three-month extension of time. This Response was filed 89 days after the date that is three months after the mailing date of the Non-Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 89 day Applicant delay.

On December 11, 2008, the Office mailed a Final Office Action. The Action was mailed 3 days after the four month requirement for the USPTO to respond to a reply filed under 35 U.S.C. §132. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 3 day Office delay.

On January 29, 2009, Applicants filed a Response to Final Office Action. This Response was received within three months of the mailing date of the Action.

On April 22, 2009, the Office mailed the Notice of Allowance/Notice of Allowability, and the Determination of Patent Term Adjustment for this application. The Determination of Patent Term Adjustment noted an adjustment period for this patent application of 492 days.

According to the provisions of 37 C.F.R. §1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Under 37 C.F.R. §1.702(b)(1)-(5), Applicants are entitled to this adjustment for any time other than time consumed by continued examination of the application requested by the applicant under section 132(b), beginning on the date on which a Request for Continued Examination was filed, April 19, 2005, and ending on the date the patent issues.

The amount of the Adjustment under 37 C.F.R. §1.702(b) is calculated from June 23, 2004 (*i.e.*, the day after the date that is three years from the date that the application was filed), through the day before the date the Request for Continued Examination was filed, *i.e.* April 18, 2005, subtracting only time legitimately attributable to Applicant delay. Applicants submit that the Adjustment under 37 C.F.R. §1.702(b) is 300 days. However, the delay under 37 C.F.R. §1.702(b) overlaps with delay under 37 C.F.R. 1.702(a) from June 23, 2004 through August 11,

2004, which is a total of 50 days of overlap. Therefore the Adjustment under 37 C.F.R. §1.702(b) is 300 days - 50 days of overlap = **250 days**.

Applicants have calculated the Patent Term Adjustment based on 37 C.F.R. 1.702(a), 37 C.F.R. 1.702(b) and 37 C.F.R. 1.704 through the mailing of the Notice of Allowance. The total calculation of Patent Term Adjustment is as follows: Office delay under 37 CFR 1.702(a) is 723 days; Office Delay under 37 CFR 1.702(b) is 300 days; and Applicant delay under 37 CFR 1.704(c) is: $18+6+30+30+58+89=231$ days with 50 days of overlap, therefore the adjustment is $723+300-231-50 = \mathbf{742 \text{ days}}$.

Applicants reserve the right to request any further patent term adjustment based on the actual issue date of the instant application.

U.S.S.N.: 09/888,345
Applicant: Platner, *et al.*

If the Office would like to discuss any aspect of this filing, the Office representative assigned to process this request is welcome to call the undersigned attorney. No additional fee is believed to be due by submission of this paper. However, the Office is authorized to charge any such fees, or to credit any overpayment in fees to Deposit Account No. **50-0311**, Customer Number **30623**, Attorney Docket No. 36353-501.

Respectfully submitted,

Date: August 5, 2009

A handwritten signature in black ink, appearing to read 'Ido Rabinovitch', written over a horizontal line.

Ido Rabinovitch
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/888,345

Filing or 371(c) Date:	06-22-2001	USPTO Delay (PTO) Delay (days):	723
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	231
Post-Issue Petitions (days):	+0	Total PTA (days):	492
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-20-2009	Mail Notice of Allowance		
05-19-2009	Document Verification		
05-19-2009	Notice of Allowance Data Verification Completed		
05-11-2009	Examiner's Amendment Communication		
02-05-2009	Date Forwarded to Examiner		
01-29-2009	Amendment after Final Rejection		
12-11-2008	Mail Final Rejection (PTOL - 326)	3	
12-08-2008	Final Rejection	↑	
08-08-2008	Information Disclosure Statement considered	↑	
08-08-2008	Information Disclosure Statement considered	↑	
08-08-2008	Reference capture on IDS	↑	
08-08-2008	Information Disclosure Statement (IDS) Filed	↑	
09-23-2008	Date Forwarded to Examiner	↑	
08-08-2008	Response after Non-Final Action		89
08-08-2008	Request for Extension of Time - Granted		↑
08-08-2008	Information Disclosure Statement (IDS) Filed		↑
08-08-2008	Information Disclosure Statement (IDS) Filed		↑
04-16-2008	Mail Examiner Interview Summary (PTOL - 413)		↑
04-11-2008	Examiner Interview Summary Record (PTOL - 413)		↑
02-11-2008	Mail Non-Final Rejection		↑
02-04-2008	Non-Final Rejection		
01-15-2008	Date Forwarded to Examiner		
01-15-2008	Date Forwarded to Examiner		
12-21-2007	Request for Continued Examination (RCE)		58
01-15-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
12-21-2007	Request for Extension of Time - Granted		↑
12-21-2007	Workflow - Request for RCE - Begin		↑
08-30-2007	Correspondence Address Change		↑
08-30-2007	Change in Power of Attorney (May Include Associate POA)		↑
07-24-2007	Mail Final Rejection (PTOL - 326)		↑

07-20-2007	Final Rejection	
11-11-2004	Information Disclosure Statement considered	
11-11-2004	Information Disclosure Statement (IDS) Filed	
05-15-2007	Date Forwarded to Examiner	
04-24-2007	Response after Non-Final Action	
01-24-2007	Mail Non-Final Rejection	
01-19-2007	Non-Final Rejection	
11-14-2006	Date Forwarded to Examiner	
10-27-2006	Response after Non-Final Action	30
10-27-2006	Request for Extension of Time - Granted	↑
06-27-2006	Mail Non-Final Rejection	↑
06-23-2006	Non-Final Rejection	
06-14-2006	Case Docketed to Examiner in GAU	
05-16-2006	Date Forwarded to Examiner	
05-16-2006	Date Forwarded to Examiner	
05-10-2006	Request for Continued Examination (RCE)	30
05-16-2006	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	↑
05-10-2006	Request for Extension of Time - Granted	↑
05-10-2006	Workflow - Request for RCE - Begin	↑
01-10-2006	Mail Final Rejection (PTOL - 326)	↑
01-09-2006	Final Rejection	
10-28-2005	Date Forwarded to Examiner	
10-24-2005	Response after Non-Final Action	6
09-02-2005	Correspondence Address Change	↑
09-02-2005	Change in Power of Attorney (May Include Associate POA)	↑
07-18-2005	Mail Non-Final Rejection	↑
06-29-2005	Non-Final Rejection	
04-24-2005	Date Forwarded to Examiner	
04-19-2005	Request for Continued Examination (RCE)	
04-24-2005	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	
04-19-2005	Workflow - Request for RCE - Begin	
04-07-2005	Mail Advisory Action (PTOL - 303)	
03-31-2005	Advisory Action (PTOL-303)	
03-25-2005	Date Forwarded to Examiner	
03-18-2005	Amendment after Final Rejection	
01-21-2005	Mail Final Rejection (PTOL - 326)	
11-29-2004	Reference capture on IDS	
11-29-2004	Information Disclosure Statement (IDS) Filed	18
11-29-2004	Information Disclosure Statement (IDS) Filed	
01-10-2005	Final Rejection	↑

11-30-2004	IFW TSS Processing by Tech Center Complete		⬆
11-30-2004	Date Forwarded to Examiner		⬆
11-11-2004	Response after Non-Final Action		⬆
09-29-2004	Mail Miscellaneous Communication to Applicant		
09-29-2004	Miscellaneous Communication to Applicant - No Action Count		
08-11-2004	Mail Non-Final Rejection	720	
08-05-2004	Non-Final Rejection		⬆
07-15-2004	Case Docketed to Examiner in GAU		⬆
10-07-2003	Case Docketed to Examiner in GAU		⬆
11-25-2002	Information Disclosure Statement (IDS) Filed		⬆
11-25-2002	Information Disclosure Statement (IDS) Filed		⬆
06-12-2002	Correspondence Address Change		⬆
06-12-2002	Change in Power of Attorney (May Include Associate POA)		⬆
04-23-2002	Case Docketed to Examiner in GAU		⬆
01-24-2002	Information Disclosure Statement (IDS) Filed		⬆
01-24-2002	Information Disclosure Statement (IDS) Filed		⬆
10-12-2001	Case Docketed to Examiner in GAU		⬆
08-16-2001	Application Dispatched from OIPE		⬆
08-15-2001	Correspondence Address Change		⬆
07-03-2001	IFW Scan & PACR Auto Security Review		⬆
06-22-2001	Initial Exam Team nn		⬆

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